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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of PETITION TO)	
AMEND RULE 31(d) OF THE)	Supreme Court No. R-08-_____
RULES OF THE SUPREME COURT)	
OF ARIZONA	)	PETITION TO AMEND RULE
	)	31(d) OF THE RULES OF THE
	)	SUPREME COURT OF
	)	ARIZONA
)	
	)	EXPEDITED
	)	CONSIDERATION
	)	REQUESTED
)	
	)	or in the alternative
)	
	)	MOTION FOR LATE-FILED
	)	PETITION

This petition is brought under Rule 28(G) of the Rules of the Supreme Court. Petitioner seeks the addition of an exemption to Rule 31(d) of the Rules of the Supreme Court. Such exemption would, in matters before the Arizona Corporation Commission (“Commission”) and under certain conditions, allow an individual who is not an active member of the state bar to represent either a public

service corporation, an interim operator appointed by the Commission, or a non-profit organization. The petitioner files this request for expedited consideration or in the alternative, Motion for Late-Filed Petition on behalf of the members of the Commission: Chairman Mike Gleason and Commissioners William A. Mundell, Jeff Hatch-Miller, Kristin K. Mayes and Gary Pierce. The Commission voted to approve the submittal of this Petition in their Open Meeting on February 5, 2008.

I. Background and Purpose of the Proposed New Rule.

The Commission is required by Article 15, Section 3, of the Arizona Constitution to consider the needs of all whose interests are involved, including public service corporations and the consuming public. While the Commission allows for public comment by the interested public, by the Commission's own rule,¹ only evidence presented under oath can be considered in the decision making process. Present procedure allows for intervention by persons or organizations "directly and substantially affected by the proceedings."² Only parties granted intervention are allowed "to introduce evidence, examine and cross-examine witnesses, make arguments, and . . . participate in the conduct of the proceeding."³

Under certain circumstances, public service corporations, pursuant to A.R.S. § 40-243, may be represented by a corporate officer or employee who is not a

¹ R14-3-109(F)

² R14-3-105(A)

³ R14-3-104(A)

member of the state bar. Individuals may represent themselves in Commission proceedings whether or not they may be an attorney. Consistent with the Supreme Court Rules, all other parties are required to seek representation by a member of the state bar.

This proposed exemption addresses instances where parties may have inadequate resources to retain legal counsel. Many public service corporations in Arizona are small operations with income barely sufficient to keep their service going to a small group of customers. The employment of an attorney could far exceed available funds. The Commission frequently finds need to appoint interim operator for the purpose of temporary management of troubled companies. Again, funding for legal counsel is not available. Non-profit organizations representing interested citizen's groups which could be affected by Commission decisions also lack funding for legal counsel. Facts and views which these groups can provide would be of benefit to the Commission's decision making and unless submitted through sworn testimony of a party, cannot be considered.

It has become an increasing concern of the Commission that these economic restraints which prevent retention of legal counsel inhibit procedural due process and hamper the achievement of a true balance between public need and public protection. The Commission's proposed amendment to Rule 31 of the Rules of the Supreme Court would allow these groups participation with limited scope in

Commission proceedings. The Commission's proposed amendment also incorporates a mechanism whereby participation without counsel can be limited if necessary to avoid disruption of the proceedings. In the absence of the Commission's proposed amendment to Rule 31, the public interest will continue to be inhibited by the inability of numerous small but important public groups to adequately present their positions in Commission proceedings.

II. Expedited Consideration

Petitioner submits this request for expedited consideration of the proposed amendment under Rule 18(G) or in the alternative, as a Motion for Late Filed Petition to be acted upon in the annual rules conference in September 2008.

The Commission has increasing concern that the voice of these affected groups cannot be heard. Representation by a person not an active member of the state bar in administrative proceedings is already allowable in many instances with several agencies, both federal and state. Supreme Court Rule 31(G) lists several instances recognized in Arizona. The Courts have recognized that "more people . . . are directly affected by the processes of administrative boards and quasi-judicial tribunals than by adjudications of the courts." *Denver Bar Association v. Public Utilities Commission of the State of Colorado*, 391 P.2d 467, 469 (1964). The Commission believes this exemption is necessary in the protection of the public interest. The Commission currently has pending a number of matters with the

potential to substantially affect the interests of large segments of the community. In addition, the Commission anticipates that several significant proceedings will be commenced in the near future. It is of vital importance that the ability of these groups to present their positions to the Commission effectively be effectuated as soon as possible. In the absence of expedited consideration of this Petition, the Commission's ability to receive pertinent evidence in proceedings will continue to be hampered for a significant period of time. Petitioner believes that expedited consideration of this Petition is necessary to adequately address an ongoing public need.

III. Conclusion

The adoption of the proposed amendment would further promote the protection of the public interest. Thus the Commission respectfully petitions this Court to amend Rule 31(G) of the Rules of the Supreme Court, as set forth in Appendix A.

RESPECTFULLY SUBMITTED this 29th day of February, 2008:

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Electronic copy filed with the
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Arizona this 29th day of
February, 2008

by: Dawn A. Wilson

APPENDIX A

DRAFT OF THE PROPOSED AMENDED RULE

Rule 31. Regulation of the Practice of law

[No change in existing text. The following language would be an addition of another exemption.]

(d) Exemptions

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

- (A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,
- (B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and
- (C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

In matters before the Commission where a class of parties is created pursuant to R14-3-104(C), the members of the class or the presiding officer may designate one of the class members who is not an active member of the state bar to be the class representative.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.